Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

WALTER S. RODRIGUEZ AND
ALPHONSE J. MARANTO,

Petitioners,

v.

STATE OF LOUISIANA, DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT,

Respondent.

**On Petition For Writ Of Certiorari
To The Supreme Court
Of The State Of Louisiana**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does this Court's holding, under the Fifth Amendment, that "just compensation" must include pre-judgment interest from the date of taking apply equally to the states through the Fourteenth Amendment – more particularly, does a Louisiana statute that deprives Petitioners of pre-judgment interest from the date their property was taken by the State of Louisiana violate the United States Constitution?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

PETITION FOR WRIT OF CERTIORARI 1

JURISDICTION AND DECREES BELOW 1

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF FACTS 2

REASONS FOR GRANTING THE WRIT 4

1. Under Controlling Precedent of this Court, Constitutional "Just Compensation" Mandates Interest from the Date of the Taking 4

2. The Louisiana Statute is Palpably Unconstitutional 9

3. This Court Should Reverse, or Vacate and Remand, the Decree Below by Summary Disposition 12

CONCLUSION 13

TABLE OF AUTHORITIES

Page

CASES

Alvarado v. United States, 497 U.S. 543, 110 S.Ct. 2995 (1990) 12

Bennett v. White, 865 F.2d 1395 (3rd Cir.), *cert. denied*, 492 U.S. 920, 109 S.Ct. 3247 (1989) 7

Chicago B. & O.R. Co. v. City of Chicago, 166 U.S. 226, 17 S.Ct. 581 (1896) 4, 7

City of Sparks v. Armstrong, 748 P.2d 7 (Nev. 1987) 8

Duquesne Light Co. v. Barasch, 488 U.S. 299, 109 S.Ct. 609 (1989) 4

Florida Dept. of Health v. Florida Nursing Home Assn., 450 U.S. 147, 101 S.Ct. 1032 (1981) 12

Fullerton v. Knox County Comm'rs, 672 A.2d 592 (Me. 1996) 8

Kirby Forest Indus., Inc. v. United States, 467 U.S. 1, 104 S.Ct. 2187 (1984) 5, 6, 10, 13

Leverty and Hurley Co. v. Commissioner of Transp., 471 A.2d 958 (Conn. 1984) 8

Monongahela Navigation Company v. United States, 148 U.S. 312, 13 S.Ct. 622 (1893) 4

Phelps v. United States, 274 U.S. 341, 47 S.Ct. 611 (1927) 5, 6, 13

Redevelopment Agency of the City of Burbank v. Gilmore, 700 P.2d 794 (Cal. 1985) 8

Seaboard Air Line Ry. Co. v. United States, 261 U.S. 299, 43 S.Ct. 354 (1923) 5, 13

Sinatra, Inc. v. City of Seattle, 935 P.2d 555 (Wash. 1997) 7, 8

TABLE OF AUTHORITIES – Continued

Page

State, DOTD v. Estate of Davis, 572 So.2d 39 (La. 1990) 10

Tucson Airport Auth. v. Freilich, 665 P.2d 1002 (Ariz. 1983) 8

Verrochi v. Commonwealth, 477 N.E.2d 366 (Mass. 1985) 8

Von Cleef v. New Jersey, 395 U.S. 814, 89 S.Ct. 2051 (1969) 12

Williams v. Alabama Power Co., 1999 WL 130279 (Ala. March 12, 1999) (No. 1970267) 8, 9

STATUTES

28 U.S.C. § 1257 1

La. R.S. 48:422 10

La. R.S. 48:445 ..... 2, 9

La. R.S. 48:450 ..... 3, 11

La. R.S. 48:451 11

La. R.S. 48:455 10

PETITION FOR WRIT OF CERTIORARI

Petitioners Walter S. Rodriguez and Alphonse J. Maranto request that a writ of certiorari issue to review the decree of the Supreme Court of Louisiana in this case. Petitioners further suggest that this Court reverse that decree by summary disposition on the merits because the constitutional error below is palpably clear.

JURISDICTION AND DECREES BELOW

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. On February 26, 1999, the Supreme Court of Louisiana issued a final decree in this case denying Petitioners' application for writ of certiorari, which application was expressly based upon Petitioners' contention that the Louisiana statute relied upon by the state appellate court violated the Fifth and Fourteenth Amendments to the United States Constitution. App. 1. The state appellate court rendered its decision on October 28, 1998. App. 2-13. The original state district court judgment, from which Respondent appealed, was entered on June 30, 1997, and amended on October 22, 1997. App. 14-17. The constitutional issue set forth herein was first raised by Petitioners in their original Answer in the state district court on June 1, 1995. App. 18-23.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states: "[N]or shall private property be taken for public use, without just compensation." This prohibition applies to the states through the "due process" clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF FACTS

On November 18, 1988, the State of Louisiana, Department of Transportation and Development (the "State") deposited funds into the registry of the St. Charles Parish Court in accordance with a Court order, thereby permitting the State immediately to take title to certain property needed in connection with the I-310 interchange project at Airline Highway in St. Charles Parish, Louisiana. App. 24-32. Under Louisiana law, the taking of this property was complete on November 18, 1988, the date the State filed its deposit in accordance with the Court's order. La. R.S. 48:445. At the time of the taking, the property was owned by Albertha C. Screen, Alvin J. Caillouet, and Walter S. Rodriguez; subsequently Mrs. Screen acquired Mr. Caillouet's share, after which she died and her share was inherited by Alphonse J. Maranto, such that by the time of trial the sole owners were, and still are, Messrs. Rodriguez and Maranto (the "Landowners").

After a number of preliminary matters and ownership issues, and after awaiting actual construction of the highway to ascertain all damages, and then seeking and

retaining expert appraisers, conducting written discovery and taking depositions, the Landowners filed an Answer with specific monetary demands, as required by La. R.S. 48:450, on June 1, 1995. App. 18-23. The Answer expressly raised the issue of the constitutionality of the State's interest statute in effect at the taking. *Id.*

After a week-long jury trial, the Court entered Judgment awarding just compensation to the Landowners of $209,628.50 more than the amount deposited by the State, plus legal interest commencing on the date of the taking, November 18, 1988, reasonable attorney's fees of 25%, and all costs. App. 16-17.

The State appealed several of the trial court's holdings, including the award of legal interest on the grounds that interest should not have been awarded prior to the date that the Landowners filed their Answer, in accordance with the State statute in effect at the time of the taking. On October 28, 1998, a three-Judge panel of the Louisiana Fifth Circuit Court of Appeal affirmed most of the trial court's holdings but modified its award of interest to commence on the date of Petitioner's Answer, June 1, 1995, rather than on the date of the taking, November 18, 1988. App. 2-13. The net effect of the appellate court's ruling on this issue was to deprive the Landowners of $161,859.41 in interest and attorney's fees thereon. *Id.*

On February 26, 1999, the Louisiana Supreme Court denied the Landowners' Writ Application to correct this constitutional error, without comment. App. 1.

REASONS FOR GRANTING THE WRIT

1. Under Controlling Precedent of this Court, Constitutional "Just Compensation" Mandates Interest from the Date of the Taking.

Petitioners' property was taken by the State of Louisiana for a public purpose. The Fifth Amendment states: "[N]or shall private property be taken for public use, without just compensation." This provision applies to the states through the Fourteenth Amendment. *See, e.g., Duquesne Light Co. v. Barasch*, 488 U.S. 299, 305, 109 S.Ct. 609, 614 (1989); *Chicago B. & O.R. Co. v. City of Chicago*, 166 U.S. 226, 17 S.Ct. 581 (1896). Therefore, the Fifth Amendment to the United States Constitution, applicable to the State of Louisiana through the Fourteenth Amendment, mandates that Petitioners receive "just compensation."

One hundred years ago, in *Monongahela Navigation Company v. United States*, 148 U.S. 312, 327, 13 S.Ct. 622, 626-27, (1893), the United States Supreme Court emphatically established the judicial branch's province to determine "just compensation" under the Constitution:

> The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry. . . . The right of the legislature of the state, by law, to apply the property of the citizen to the public use, and then to constitute itself the judge of its own case to determine what is the "just compensation" it ought to pay therefor, or how much benefit it has conferred upon the citizen by thus taking

> his property without his consent or to extinguish any part of such "compensation" by prospective conjectural advantage, or in any manner to interfere with the just powers and province of courts and juries in administering right and justice, cannot for a moment be admitted or tolerated under our Constitution.

This holding is still the law. *See, e.g., Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 104 S.Ct. 2187 (1984).

The United States Supreme Court has repeatedly held that "just compensation" must include interest from the date of the taking until paid. *See, e.g., Kirby, supra; Phelps v. United States*, 274 U.S. 341, 344, 47 S.Ct. 611, 612 (1927); *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 304-306, 43 S.Ct. 354, 356 (1923).

In *Seaboard*, a federal takings case, the United States Supreme Court reversed the Circuit Court of Appeals and reinstated the trial court decree granting the landowner interest from the date his property was taken "in order that the owner shall not suffer loss and shall have 'just compensation' to which he is entitled." 261 U.S. at 306. As this Court explained:

> It is obvious that the owner's right to just compensation cannot be made to depend upon state statutory provisions. . . . The requirement that "just compensation" shall be paid is comprehensive and includes all elements and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation.
>
> 261 U.S. at 304-06.

In *Phelps*, the United States Supreme Court again reversed the court below for failing to include an award of interest in a federal takings case, declaring:

> Plaintiffs' property was taken before its value was ascertained or paid. Judgment in 1926 for the value of the use of the property in 1918 and 1919, without more, is not sufficient to constitute just compensation.
>
> 274 U.S. at 344.

In *Kirby*, the United State Supreme Court reiterated this constitutional mandate:

> [T]he Fifth Amendment does not forbid the Government to take land and pay for it later. [Citation omitted.] But if the disbursement of the award is delayed, the owner is entitled to interest thereon sufficient to ensure that he is placed in as good a position pecuniarily as he would have occupied if the payment had coincided with the appropriation.
>
> 467 U.S. at 10.

The central issue before the Court in *Kirby* was when interest was due. *Kirby* involved a "straight-taking," where title is not vested in the condemnor unless and until full payment is made, after final judgment in a proceeding to determine just compensation. In *Kirby*, the Court contrasted this procedure with a "quick-taking," whereby "title and right to possession thereupon vest immediately with the deposit of an "amount of money equal to the estimated value of the land," and, after subsequent judicial proceedings, "the owner is awarded the difference (if any) between the adjudicated value of the land and the amount already received by the owner,

plus interest on the difference." *Id.* at 5. The Court explained that interest runs from the date of the taking, i.e., the date "the Government tendered payment and acquired title in the usual course." *Id.* at 16.

The United States Court of Appeal for the Third Circuit recently considered this constitutional requirement in a state takings case, holding that the mandate of the Fifth Amendment applies equally to the states through the Fourteenth Amendment:

> It has been settled since *Chicago, Burlington & Quincy R. Co. v. City of Chicago, supra,* that *fourteenth amendment due process includes a substantive prohibition against state takings of private property* without compensation equivalent to express prohibition in the Fifth Amendment against such takings by the federal government. *It has also long been settled that a component of just compensation includes interest for the period during which compensation has been withheld.*
>
> *Bennett v. White,* 865 F.2d 1395, 1406 (3rd Cir.), *cert. denied,* 492 U.S. 920, 109 S.Ct. 3247 (1989) (emphasis added).

In *Bennett,* the Third Circuit held that Pennsylvania had taken property and that it must pay interest from the date of the taking as part of the "just compensation" award. *Id.*

Several state supreme courts have also recognized that pre-judgment interest from the date of the taking on condemnation awards is a component of just compensation guaranteed by the United States Constitution. *See, e.g., Sinatra, Inc. v. City of Seattle,* 935 P.2d 555, 563-64

(Wash. 1997) ("[I]nterest is necessary to compensate the property owner for the loss of the use of the monetary value of the taking or damage from the time of the taking until just compensation is paid."); *Fullerton v. Knox County Comm'rs*, 672 A.2d 592, 594 (Me. 1996) (constitutional mandate for payment of interest from date of taking in order for property owner to receive just compensation); *City of Sparks v. Armstrong*, 748 P.2d 7, 9 (Nev. 1987) ("The term 'just compensation' includes interest from date of taking."); *Verrochi v. Commonwealth*, 477 N.E.2d 366, 368-69 (Mass. 1985) ("When there is a delay between the taking and the payment of compensation, persons are constitutionally entitled to interest on the damages for the period of delay as part of the just compensation due them."); *Redevelopment Agency of the City of Burbank v. Gilmore*, 700 P.2d 794, 798-800 (Cal. 1985) ("legal interest" from date condemnor authorized to possess property is constitutional requirement of just compensation); *Leverty and Hurley Co. v. Commissioner of Transp.*, 471 A.2d 958, 960 (Conn. 1984) (right to award of interest from date of taking to date of payment was constitutional requirement of just compensation, even without statutory provision for interest); *Tucson Airport Auth. v. Freilich*, 665 P.2d 1002, 1004 (Ariz. 1983) (payment of interest from date of possession to date of judgment on a condemnation award necessary to satisfy constitutional requirement of just compensation).

Most recently, in *Williams v. Alabama Power Co.*, 1999 WL 130279 (Ala. March 12, 1999) (No. 1970267), the Alabama Supreme Court reversed a trial court holding that pre-judgment interest could not be granted to a landowner in a condemnation case. The Supreme Court ruled:

"The payment of just compensation for private property taken for a public purpose is constitutionally mandated, and the decision of the Legislature not to provide for the calculation of pre-judgment interest cannot prevent Williams from recovering pre-judgment interest in this case." *Id.* Moreover, although the court in *Williams* was not invalidating an unconstitutional statute, it did state that "[e]ven if the legislature had amended § 18-1A-211 to expressly prohibit the inclusion of pre-judgment interest in a delayed-payment condemnation award, Williams would still be entitled to pre-judgment interest from the date of the taking of this property to the date of payment, because such an amendment would not withstand constitutional scrutiny." *Id.* Thus, the Alabama Supreme Court identified the very constitutional problem that the Louisiana Supreme Court has refused to recognize and that requires this Court's attention here.

Specifically, this Court needs to confirm that pre-judgment interest from the date of the taking is a requirement of "just compensation" under the Fifth Amendment which applies equally to state takings through the Fourteenth Amendment.

2. The Louisiana Statute is Palpably Unconstitutional.

The Landowners' property in this case was subject to a quick-taking by the State of Louisiana, pursuant to La. R.S. 48:445, which provides: "Upon the deposit of the amount of the estimate in the registry of the court . . . title to the property . . . shall vest in the department." Thus, the taking in this case occurred on the date the deposit was made, and legal interest from that date forward is

mandated by the United State Constitution, as set forth in *Kirby*.

On the date of the entry of Judgment in this case, Louisiana law reflected the constitutional mandate and expressly provided that legal interest on an award in a quick-taking case is due from the date of the taking.[1] The trial court applied this statute when it entered Judgment on June 30, 1997. App. 13. The State appealed, contending that the prior statute applied, since the taking occurred while it was in effect, and that interest therefore should run from the date of "legal demand," which was interpreted by the Louisiana Supreme Court in *State, DOTD v. Estate of Davis*, 572 So.2d 39 (La. 1990), to mean the date of the filing of an answer by the landowner.[2] The court of appeal agreed with the State and reversed the interest award, holding the 1988 statute applicable and denying Petitioners' interest until the filing of their Answer. App.

---

[1] Pursuant to La. R.S. 48:455 (1992):

> If the amount finally awarded for compensation exceeds the amount deposited, the judgment shall include legal interest on the excess from the date of presentation of the petition as provided in La. R.S. 48:422 until paid, but such interest shall not accrue on any award made for expert fees or attorney's fees prior to judgment.

[2] Pursuant to La. R.S. 48:455 (1988):

> If the amount finally awarded for compensation exceeds the amount deposited, the judgment shall include legal interest on the excess from the date of legal demand until paid, but such interest shall not accrue on any award made for expert fees or attorney's fees prior to judgment.

2-11. The Louisiana Supreme Court denied Petitioners' Writ Application to review that ruling. App. 1.

The Louisiana statutory scheme in expropriation cases makes any delay in awarding interest especially burdensome to the landowner because La. R.S. 48:451 provides that as soon as an Answer is filed, "either party may, upon *ex parte* motion, request that the matter be docketed for trial . . . not more than 60 days after the filing of the motion, and the trial shall be conducted with preference and with the greatest possible dispatch." Thus, a landowner cannot simply file a quick answer to start the interest "clock" ticking because of the risk of the State demanding a trial within 60 days without the landowner having hired appraisers or taken discovery. Furthermore, the statute requires that the Answer set forth "the value of each parcel expropriated and the amount he claims as damages to the remainder of his property," which damage claim must further be "reasonably itemized." La. R.S. 48:450. Although the State has the benefit of years of preparation and analysis prior to the taking, obviously a landowner does not and cannot hire attorneys, appraisers, and conduct discovery immediately. Indeed, the statute at issue denies interest to the landowners' from the date their property is taken, no matter when they are served or notified of the suit being filed.

In short, it is manifestly a violation of due process to shift the economic loss to the landowners, after their property is taken, for the period of time it takes them to receive notice of the taking, obtain attorneys, take discovery, hire appraisers, and file an answer containing a specific monetary demand, as required by law, while the State

enjoys title to the land immediately upon filing of the petition and deposit. This statute thus allows the State to profit from putting a low deposit into the registry of the court, as the State did in this case. It is plainly unconstitutional to so reward the State at the expense of the landowners whose property has been taken.

3. This Court Should Reverse, or Vacate and Remand, the Decree Below by Summary Disposition.

As this Court knows, this Petition may be resolved by summary disposition on the merits, without further briefing or oral argument, either by simple order granting certiorari or by per curiam opinion. This Court could either reverse the decree below to correct the constitutional error, or vacate and remand to the Court below for proper consideration of this Court's prior holdings. *See, e.g., Alvarado v. United States*, 497 U.S. 543, 110 S.Ct. 2995 (1990); *Florida Dept. of Health v. Florida Nursing Home Assn.*, 450 U.S. 147, 101 S.Ct. 1032 (1981); *Von Cleef v. New Jersey*, 395 U.S. 814, 89 S.Ct. 2051 (1969).

CONCLUSION

The Petition for Writ of Certiorari should be granted to address the validity of the Louisiana statute depriving Petitioners and other landowners of interest on compensation awards from the date their property is taken, in violation of the Fifth and Fourteenth Amendment prohibition on takings of private property by the State without "just compensation."

Additionally, the issue presented here can be resolved summarily, without plenary briefing or argument, to correct the constitutional error, or vacate and remand for consideration and application of this Court's prior decisions in *Kirby v. United States*, *Phelps v. United States*, and *Seaboard v. United States*.

Petitioners pray that this Court exercise its discretion to remedy the blatant, and important, constitutional error below and clarify that pre-judgment interest from the date of the taking is a requirement of "just compensation" under the Fifth Amendment which applies equally to state takings through the Fourteenth Amendment.

Respectfully submitted,

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The Supreme Court of the State of Louisiana

STATE OF LOUISIANA,
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

VS. NO. 98-C-2968

ALBERTHA C. SCREEN, ET AL

IN RE: Maranto, Alphonse J.; Rodriguez, Walter S.; - Defendant(s); Applying for Writ of Certiorari and/or Review; Parish of St. Charles 29th Judicial District Court Div. "C" Number 34,386; to the Court of Appeal, Fifth Circuit, Number 98-CA-0219.

February 26, 1999

Denied.

WFM

PFC

CDK

BJJ

JPV

CDT

JTK

LEMMON, J. not on panel.

Supreme Court of Louisiana
February 26, 1999

/s/ Clerk of Court
For the Court

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT	*	NO. 98-CA-219
	*	COURT OF APPEAL
	*	FIFTH CIRCUIT
VERSUS	*	STATE OF LOUISIANA
ALBERTHA C. SCREEN, ET AL.	*	
	*	

APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
DOCKET NO. 34,386
HONORABLE EMILE ST. PIERRE, JUDGE

CHARLES GRISBAUM, JR.
JUDGE
OCTOBER 28, 1998

(Court composed of Judges H. Charles Gaudin, Charles Grisbaum, Jr., and James L. Cannella)

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SET ASIDE IN PART AND AFFIRMED IN PART

The plaintiff-appellant, State of Louisiana, Department of Transportation and Development (hereinafter "DOTD"), appeals the trial court's ruling granting a judgment notwithstanding the verdict (JNOV) and awarding legal interest and costs, in favor of the defendants-appellees, Walter Rodriquez and Alphonese J. Maranto. We set aside in part and affirm in part.

ISSUES

The issues present for review are:

(1) Whether the trial court erred in granting defendants a JNOV on the issue of severance damages;

(2) Whether the jury erred in its award of delay damages to defendants;

(3) Whether the trial court erred in its award of costs to defendants;

(4) Whether the trial court erred in awarding interest from the date of the taking; and

(5) Whether the trial court erred when it struck the DOTD'S proffered evidence.

FACTS AND PROCEDURAL HISTORY

On November 18, 1988, the DOTD filed a petition of expropriation and deposited $201,078.00 in the registry of the district court, in accordance with La. R.S. 48:441 et seq., in order to take quick title to a portion of a 10.5-acre tract of land for the construction of Interstate 310 in St.

Charles Parish. As a result of an incorrect survey, the land was reappraised and an additional $147,122.00 was deposited into the registry of the court. Thus, the total amount deposited for just compensation was $348,200.00.

We note that, at the time of taking, the property was owned by Albertha C. Screen, Alvin J. Caillouet, and Walter S. Rodriguez. Mrs. Screen subsequently acquired Mr. Caillouet's share and, after her death, her share was inherited by Alphonse J. Maranto. However, at the time of trial, the sole owners of the property were defendants, Mr. Rodriguez and Mr. Maranto.

On June 1, 1995, defendants filed their answer and reconventional demand, praying for an increase in the amount deposited for the part taken, severance damages, and alleging that they were owed "delay" damages for the unreasonable taking of their property out of commerce by the State. A jury trial was held from January 27, to February 3, 1997. The jury fond that defendants were owed $557,828.50 in just compensation – $272,828.50 for the part taken, $250,000.00 for severance damages, and $35,000.00 for delay damages. The trial relief following the judgment asking the trial court to grant a JNOV on the issues of severance and delay damages and to order a new trial. On October 3, 1997, the trial court granted a JNOV on the issue of severance damages only and increased the award of severance damages to $326,448.72 – a $76,448.72 increase over the jury's award. A JNOV on the issue of delay damages and the request for a new trial were both denied. The DOTD subsequently filed a notice appealing this judgment on December 18, 1997.

ISSUE ONE – LAW AND ANALYSIS

Appellant first contends that the trial court erred in granting appellees a JNOV on the issue of severance damages. We have set forth the standard used by the trial judge in considering a motion of JNOV to be "properly granted 'only when the facts and inferences are so strongly and overwhelmingly in favor of one party that the trial judge believes reasonable men could not have arrived at a contrary verdict.' " *State of La. Dep't of Transp. & Dev. v. Scramuzza*, 95-786 (La. App. 5th Cir. 4/30/96), 673 So.2d 1249, 1254, *writ granted*, 96-1796 (La. 11/1/96), 681 So.2d 1255, *aff'd in part, rev'd in part*, 96-1796 (La. 4/8/97), 692 So.2d 1024. Moreover,

> In considering a motion for JNOV, the trial court may not weigh the evidence, substitute its judgment of facts for that of the jury, or pass on the credibility of witnesses. . . . Furthermore, the court should consider all of the evidence, not just the evidence that supports the non-mover's case, and should give the non-mover the benefit of every legitimate and reasonable inference that can be drawn form the evidence by the jury. . . .

Lambert v. State of La., Through the Dep't of Transp. & Dev., 96-160 (La. App. 5th Cir. 10/16/96), 683 So.2d 839, 845 (citations omitted).

In reviewing a JNOV, we must first determine if the trial court erred in granting the JNOV. This is done by using the aforementioned criteria just as the trial judge does in deciding whether to grant the motion or not, i.e., do the facts and inferences point so strongly and overwhelmingly in favor of the moving party that reasonable

men could not arrive at a contrary verdict? *Anderson v. New Orleans Public Serv.*, 583 So.2d 829 (La. 1991), followed by *Christina*, supra. If the answer to that question is in the affirmative, then the trial judge was correct in granting the motion. *Id.* If, however, reasonable men in the exercise of impartial judgment might reach a different conclusion, then it was error to grant the motion and the jury verdict should be reinstated. *Id.*

In the trial court's Reasons for Judgment, it is stated that "[t]he Court cannot help but agree with the Landowners that the *minimum* amount of severance damages that should have been awarded by the jury were those awarded by the State's appraisers. The evidence clearly shows this to have been the minimum amount that should have been awarded." On its face, this statement suggests that the trial court did, indeed, weigh the evidence.

The record shows five appraisers testified over the course of the trial. Jack E. Evans, Jr. and Becky Deano testified for the DOTD and Fred Guice, Bradley Oubre, and Hank Tatje testified for the appellees. The opinions on just compensation ranged from a low $343,901.00 by Jack Evans to a high of $1,821,277.00 by Fred Guice, and the opinions on the severance damage ranged from $132,633.00 by Evans to $627,786.00 by Guice. Because much discretion is afforded the trier of fact in evaluating property in expropriation cases, the evaluation of and weight given to the experts' testimony will not be disturbed on review in the absence of manifest error. *State of La., Through Dep't of Transp. and Dev. v. Estate of Davis*, 572 So.2d 39 (La. 1990). Furthermore, the trier of fact may weigh varying expert testimony and reach a value "that

does not coincide with the testimony of any expert witness" when there is evidence in the record to reasonably support the finder of fact's valuation. *West Jefferson Levee Dist. v. Coast Quality Constr. Corp.*, 93-1718 (La. 5/23/94), 640 So.2d 1258.

Although a question was raised at both trial and on appeal on what square footage the jury adopted in its calculations, because the appraisers all used different square footage in their calculations, the jury's final award of $250,000.00 on severance damages falls within the range of damages presented by the appraisers. Accordingly, we find that reasonable men, in the exercise of impartial judgment, might reach a different conclusion than the moving party, and the trial judge, in granting the JNOV, made his own credibility determination of the evidence, which he is forbidden to do. In assessing this case using the criteria set forth above, we hold that it was error to grant the appellees' motion for JNOV. Ergo, we set aside the granting of the JNOV on the issue of severance damages and reinstate the jury verdict.

ISSUE TWO – LAW AND ANALYSIS

Appellant next argues that the jury erred in awarding appellees delay damages. Appellees argue that a JNOV should have been granted to increase the amount of delay damages, or, in the alternative, a new trial. Delay damages differ from severance damages in that they are "compensable damages for property taken out of commerce for an unreasonable length of time pending expropriation or completion of a project." *Scramuzza*, supra, at

1258. We must consider five factors in maintaining an award for delay damages:

> "First, was there a delay in the project? Second, was there a reasonable expectation that project would receive a permit? Third, what was the period of the delay? Fourth, who is legally responsible for the delay? And, finally, what is a fair and reasonable calculation of the loss suffered as a result of the delay?"

State of La., Dep't of Transp. and Dev. v. McMillion Dozer Serv., Inc., 93-590 (La. App. 5th Cir. 5/31/94), 639 So.2d 766, 769, *writ denied*, 94-2345 (La. 11/29/94), 646 So.2d 399, *cert. denied*, 514 U.S. 1108, 115 S.Ct. 1958, 131 L.Ed.2d (1995) (quoting *West Jefferson Levee Dist. v. Coast Quality Constr. Corp.*, 620 So.2d 319, 333 (La. App. 5th Cir. 1993)). Furthermore, the property owner has the burden of proving, by a preponderance of the evidence, that he suffered loss as a result of the delay in expropriation. *Id.*

We find the jury appropriately considered the factual evidence presented that the location of the project had been fixed by the early 1980's, that the property would be taken by the DOTD and stripped of its frontage road on Airline Highway, and that there was a delay of nearly ten years in the taking of the property and a delay in the construction of a new frontage road. We find that this evidence was sufficient for appellees to meet there burden of proving loss. Because there is factual evidence that reasonable minds could differ on the issue of delay damages, the motion for JNOV was properly denied in accordance with the standard of review as discussed in Issue One, supra.

Finally, the granting or denying of a motion for new trial rests within the wide discretion of the trial court and its determination shall not be disturbed absent an abuse of that discretion. A jury's verdict should not be set aside if it is supportable by any fair interpretation of the evidence. *Lambert*, supra. This motion requires a less stringent test than for a NJOV in that such determinations involve only a new trial and do not deprive the parties of their right to have all disputed issues resolved by a jury. *Id.* Thus, a jury's verdict should not be set aside if it is supportable by any fair interpretation of the evidence. *Id.* Considering the evidence, we agree with the trial court that it was within the province of the jury to award delay damages and not to substitute the jury's opinion. Thus, the motion for new trial on the issue of delay damages was also properly denied.

ISSUE THREE – LAW AND ANALYSIS

Appellant next argues that the trial court erred by awarding excessive costs to appellees while claiming there is no evidence in the record to allow the court to award expert fees as costs in this case. Normally, the trial court is given much discretion in setting expert witness fees, which must be reasonable and based upon the usefulness of the witness' testimony. *Scramuzza*, supra, at 1262. In fixing expert witness fees, each case must turn on its own peculiar facts and circumstances. *Id.* Here, the costs awarded were based upon actual invoices attached to the Motion for Entry of Judgment filed by the appellees on February 27, 1997 and an affidavit of their counsel. No sworn testimony or persuasive arguments to the contrary were presented by the appellant in writing or at

the hearing before the trial court. Accordingly, we find this award was within the trial court's discretion.

ISSUE FOUR – LAW AND ANALYSIS

Appellant next argues that the trial court erred in awarding interest from the date of the taking, November 18, 1998, rather than from the date of the appellees' answer and reconventional demand, June 1, 1995. La. R.S. 48:455 controls the award of interest in an expropriation suit. As amended in 1992, the statute now provides:

> If the amount finally awarded for compensation exceeds the amount deposited, the judgment shall include legal interest on the excess from the date of presentation of the petition as provided in R.S. 48:442 until paid, but such interest shall not accrue on any award for expert fees or attorney fees prior to judgment.

However, at the time of the filing of this petition commencing this action in November of 1988, La. R.S. 48:455 provided that "If the amount finally awarded for compensation exceeds the amount deposited, the judgment shall include legal interest on the excess from the date of legal demand until paid, but such interest shall not accrue on any award made for expert fees or attorney fees prior to judgment."

This version allowed the landowner to collect legal interest only from the time of legal demand, which was interpreted to mean the date of the answer, as opposed to the time of taking, which is when compensation was deposited into the registry of the court. See *McMillion Dozer Serv., Inc.*, supra. In *McMillion*, we ruled that the

1992 amendment was a substantive change and could not be applied retroactively. Therefore, the law of this Circuit is that the version of La. R.S. 48:455 in effect at the time the petition was filed must apply. See also *State of La., Dep't of Transp. & Dev. v. August Christina & Bros., Inc.*, 97-244 (La. App. 5th Cir. 2/11/98), 1998 WL 63834. Because the 1988 version of the statute provides that legal interest is to be awarded only from the date of the landowner's demand, which is the date of the filing of the answer, appellees are entitled to interest only from June 1, 1995. Ergo, the trial court erred.

ISSUE FIVE – LAW AND ANALYSIS

Finally, appellant argues that the trial court erroneously struck its proffers. We see that, during the course of trial, appellant tried to introduce certain testimony to show prior inconsistent testimonies of appellees' appraisers, which the trial court did not allow. However, it permitted counsel to proffer the evidence by written statement. Specifically, the trial court stated "[y]ou can always do that under Article 1636 in the Code of Civil Procedure by a written explanation of what would have been proven, You can file it into the record any *time prior to judgment*." (Emphasis added.) The jury returned its verdict on February 3, 1997, and the verdict was made the judgment of the court on June 30, 1997. On September 4, and 5, 1997, appellant submitted four written proffers into the record.

La. Code Civ. P. art. 1636, in pertinent part, provides:

> A. When the court rules against the admissibility of any evidence, it shall either permit the

> party offering such evidence to make a complete record thereof, or permit the party to make a statement setting forth the nature of the evidence.
>
> B. At the request of any party, the court may allow any excluded evidence to be offered, subject to cross-examination: on the record during a recess **or such other time as the court shall designate;** or by deposition taken before a person authorized by Article 1434 within thirty days subsequent to the exclusion of any such evidence or the completion of the trial or hearing, whichever is later. When the record is completed during a recess or other designated time, or by deposition, there will be no necessity for the requesting party to make a statement setting forth the nature of the evidence.

(Emphasis added.)

Here, the trial court specifically designated a time for appellant to submit the proffers "any time prior to judgment," which was June 30, 1998. At the time of judgment on June 30, 1998, appellant had not entered the proffers and did not know there would be post trial motions filed, which cold possibly affect the underlying judgment. Furthermore, when appellant filed its notice of appeal on August 24, 1997, no proffers were yet submitted into the record. Therefore, we will not accept appellant's argument that the proffers were timely filed because they were made before the trial court ruled on appellees' motion for post-trial relief on November 7, 1997, which was the true final judgment. We consider the date of judgment in this matter to be June 30, 1998, as did the

trial court. Therefore, the trial court was correct in striking appellant's late proffers.

For the reasons assigned, we hold that the portion of the trial court's judgment dated October 3, 1997, that granted a JNOV on the issue of severance damages, is set aside and that the jury verdict is reinstated as the judgment of the trial court. That part of the judgment denying a JNOV and a new trial on the issue of delay damages is affirmed. The trial court's award of costs and expert witness fees is likewise a JNOV and a new trial on the issue of delay damages is affirmed; however, appellees are entitled to interest only from June 1, 1995. Finally, that aspect of the judgment pertaining to the motion to strike proffers is affirmed. Each party is to bear its respective costs of this appeal.

SET ASIDE IN PART AND AFFIRMED IN PART

29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES

STATE OF LOUISIANA

NO. 34,386 **DIVISION "C"**

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

VERSUS

ALBERTHA C. SCREEN, ET AL.

Filed: October 22, 1997 By Clerk: Valerie D. Duhon

JUDGMENT

This matter came for hearing for various motions on October 3, 1997.

When, after considering the pleadings, argument, memoranda of counsel, and applicable law, and for the reasons attached hereto and made a part hereof, wherefore

IT IS ORDERED, ADJUDGED AND DECREED that the Motion for Judgment Notwithstanding the Verdict on the issue of severance damages be and the same is hereby GRANTED, and the jury's award of severance damages herein is hereby increased to $326,448.72.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion for Judgment Notwithstanding the Verdict on the issue of delay damages be and the same is hereby DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion for New Trial filed herein be and the same is hereby DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion to Strike Proffers filed herein on behalf of Walter S. Rodriguez and Alphonse J. Maranto be and the same is hereby GRANTED.

JUDGMENT READ, RENDERED AND SIGNED at Hahnville, Louisiana, this 22nd day of October, 1997.

/s/ Emile R. St. Pierre
EMILE R. ST. PIERRE
JUDGE

29TH JUDICIAL DISTRICT COURT FOR THE
PARISH OF ST. CHARLES

STATE OF LOUISIANA

NO. 34,386 DIVISION "C"

STATE OF LOUISIANA,
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

VERSUS

ALBERTHA C. SCREEN, ET AL.

JUDGMENT

(Filed July 1, 1997)

This expropriation suit was tried before a jury on January 27, 28, 29, 30 and February 3, 1997. Considering the verdict returned by the jury, the pleadings and evidence submitted, and the law;

IT IS ORDERED that judgment be and it is hereby entered in favor of Walter S. Rodriguez and Alphonse J. Maranto and against the State of Louisiana, Department of Transportation and Development, in the principal amount of $209,628.50 (comprised of the jury awards of $272,828.50 for the property taken, $250,000.00 for severance damages, and $35,000.00 for delay damages, less the prior deposits by the DOTD totaling $348,200.00), plus legal interest on said $209,628.50 from November 18, 1988, until paid, and reasonable attorney's fees in the amount of 25% of the foregoing principal and interest until paid.

IT IS FURTHER ORDERED that judgment be and it is hereby entered in favor of Walter S. Rodriguez and

Alphonse J. Maranto and against the State of Louisiana, Department of Transportation and Development, for costs and expert witness fees in the amount of $45,638.76 (itemized as stated in paragraph 4 of defendants motion for entry of judgment), plus legal interest from this date until paid.

JUDGMENT READ, RENDERED AND SIGNED at Hahnville/, Louisiana, this 30th day of June, 1997.

/s/ Emile R. St. Pierre
EMILE R. ST. PIERRE
JUDGE

29TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF ST. CHARLES

STATE OF LOUISIANA

NO. 34,386 DIVISION "C" DOCKET NO.

STATE OF LOUISIANA,
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

VERSUS

ALBERTHA C. SCREEN, *et al.*

FILED: _____ _____
DEPUTY CLERK

ANSWER

(Filed June 1, 1995)

Defendants, Albertha C. Screen and Walter S. Rodriguez ("Defendants"), through undersigned counsel, respectfully present the following Answer to the Petition ("Petition") of the State of Louisiana, Department of Transportation and Development ("DOTD") filed in this matter on or about November 2, 1988, and the Supplemental and Amending Petition ("Amending Petition") filed on or about December 28, 1989:

1.

Defendants admit the allegations of paragraph I of the Petition except to answer that Alvin J. Caillouet transferred all of his right, title and interest in the property and matters referenced in the Petition and Amending Petition to Albertha C. Screen.

2.

Defendants admit the allegations of paragraph 2 of the Petition.

3.

Defendants admit the allegations of paragraph 3 of the Petition.

4.

Defendants admit the allegations of paragraph 4 of the Petition.

5.

Defendants admit the allegations of paragraph 5 of the Amending Petition.

6.

Defendants admit the allegations of Paragraph 6 of the Amending Petition.

7.

Defendants admit the allegations of Paragraph 7 of the Amending Petition.

8.

Defendants admit the allegations of paragraph 8 of the Petition.

9.

For lack of information sufficient to justify a belief, Defendants deny the allegations of paragraph 9 of the Petition.

10.

For lack of information sufficient to justify a belief, Defendants deny the allegations of paragraph 10 of the Petition.

11.

For lack of information sufficient to justify a belief, Defendants deny the allegations of paragraph 11 of the Petition.

12.

Paragraph 12 of the Petition requires no answer by Defendants.

13.

Defendants deny the allegations of paragraph 13 of the Petition and Amending Petition, and specifically deny that the sum of $348,200.00 constitutes just compensation for the property taken by the petitioner.

14.

Defendants admit the allegations of paragraph 14 of the Petition.

15.

Defendants admit the allegations of paragraph 15 of the Petition.

AND NOW, ANSWERING AFFIRMATIVELY, Defendants respectfully represent the following:

16.

Pursuant to Article 1, Section 4 of the Constitution of the State of Louisiana and Louisiana Revised Statute

48:451, *et seq.*, Defendants entitled to be compensated to the full extent of their losses as a result of the actions of the DOTD referenced herein.

17.

As a result of the taking, Defendants lost their ownership interests in the property taken, the value of which as of the date of the taking was in excess of $389,000.

18.

Further, as a result of the taking, Defendants sustained severance damages in excess of $658,000, as of the date of the taking, as a result of impairment of access, loss of frontage, loss of visibility and exposure, and irregularity of size and shape.

19.

Further, Defendants sustained damages in excess of $643,000, as of the date of the taking, as a result of the excessive and/or unreasonable delay in the taking by the DOTD from February 3, 1984, until November 18, 1988, which effectively prevented any use, development marketing or sale of the property during those fifty-eight (58) months.

20.

Further, Defendants are entitled to legal interest upon the excess compensation that is owed to them as a result of the taking, from the date of the taking on November 18, 1988, until paid, pursuant to applicable statutory and constitutional law, the Defendants specifically alleging hereby that any statute or holding to the

contrary, including La. R.S. 48:455 (1988) (repealed), is unconstitutional.

21.

Additionally, Defendants are entitled to all costs of these proceedings, statutory attorney's fees, and any further relief permitted by law or equity.

WHEREFORE, Defendants Albertha C. Screen and Walter C. Rodriguez pray for judgment in their favor and against the State of Louisiana, Department of Transportation and Development, in an amount sufficient to compensate them to the full extent of their losses, plus legal interest on this entire amount from the date of the taking until paid, statutory attorney's fees provided by law, all costs of these proceedings, and such further relief as law or equity may present.

Respectfully submtited,

/s/ Randall A. Smith
RANDALL A. SMITH,
T.A. (#2117)
Of
SMITH, JONES & FAWER, L.L.P.
201 St. Charles Avenue, Suite 3702
New Orleans, Louisiana 70170
Telephone: (504) 525-2200

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Answer has been served upon all counsel of record, and the Attorney General of the State of Louisiana, by Certified Mail, Return Receipt Requested, and properly addressed, this 1st day of June, 1995.

/s/ Randall A. Smith
RANDALL A. SMITH

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION & DEVELOPMENT

VS.

ALBERTHA C. SCREEN, ET AL

NUMBER 34,386

29TH JUDICIAL DISTRICT COURT

PARISH OF ST. CHARLES

STATE OF LOUISIANA

Filed November 2, 1988

ORDER OF EXPROPRIATION

The petition, exhibits and the premises considered:

IT IS HEREBY ORDERED that the State of Louisiana, Department of Transportation and Development, do deposit in the registry of this court, for the use and benefit of the person or persons entitled thereto, the sum of Two Hundred One Thousand Seventy-Eight and No/100 Dollars ($201,078.00).

AND IT IS HEREBY FURTHER ORDERED that the full ownership of the property described below, subject to the reservation in perpetuity in favor of ALBERTHA C. SCREEN, ALVIN J. CAILLOUET and WALTER S. RODRIGUEZ of all oil or gas located under the property described below, or the royalties therefrom, in accordance with law, and subject to any existing oil or gas reservation or to any existing oil or gas lease, being a controlled-access facility with no right of access to, from or across such facility to or from abutting lands except at the designated points at which access is permitted upon the terms and conditions specified from time to time, and upon the service, frontage or access roads provided, is expropriated and taken for highway purposes as of the

time of such deposit, according to law, said property being described as follows, to-wit:

> Two (2) certain tracts or parcels of land, and all of the rights, ways, privileges, servitudes and advantages thereunto belonging or in anywise appertaining, situated in the Parish of St. Charles, State of Louisiana, and in Section 40, Township 12 south, Range 9 East, Southeastern Land District, identified as Parcel Nos. 22-12 and 22-16, on a white print of a plat of survey, consisting of Sheet No. 22, made by Larry W. Clark, Registered Land Surveyor, dated June 29, 1984, revised, annexed to the above numbered and entitled suit, said tracts or parcels being outlined in red and being more particularly described in accordance with said plat of survey, as follows:
>
> REQUIRED IN FULL OWNERSHIP
>
> PARCEL NO. 22-12:
>
> Beginning at a point located on defendants' most northerly property line, said line being coexistent with the southerly existing right of way line of LA-US 61 (Airline Highway), St. Charles Parish, State of Louisiana, said point being more fully described as being located approximately 91.18 feet South 19 degrees 52 minutes 11 seconds East opposite Highway Survey Station 66+99.30 to the right or southerly side of the centerline of LA-US 61 (Airline Highway); thence proceed from this point of beginning along defendants' northern property line, said line being coexistent with the southerly existing right of way line of LA-US 61, South 72

degrees 32 minutes 06 seconds East a distance of 355.45 feet; thence proceed along defendants' eastern property line, said line being coexistent with the westerly existing right of way line of Hickory Street South 64 degrees 59 minutes 32 seconds West a distance of 283.76; thence proceed along defendants' western property line, said line being coexistent with the easterly existing right of way line of unnamed street North 19 degrees 52 minutes 11 seconds West a distance of 240.97 feet to point of beginning, said parcel of land contains an area of approximately 34,036.92 square feet.

REQUIRED IN FULL OWNERSHIP

PARCEL NO. 22-16:

Beginning at a point located on defendants' most northerly property line, said line being coexistent with the southerly existing right of way line of LA-US 61 (Airline Highway) said point being more fully described as being located approximately 107.37 feet South 64 degrees 59 minutes 32 seconds West opposite Highway Survey Station 72+63.29 to the right or southerly side of the centerline of LA-US 61 (Airline Highway); thence proceed from this point of beginning along defendants' northern property line, said line being coexistent with the southerly existing right of way line of LA-US 61 South 72 degrees 32 minutes 06 seconds East a distance of 360.14 feet; thence proceed along defendants' most easterly property line South 17 degrees 27 minutes 54 seconds

West a distance of 146.60 feet; thence proceed South 72 degrees 32 minutes 06 seconds East a distance of 360.00 feet; thence proceed South 17 degrees 27 minutes 54 seconds West a distance of 46.71 feet; thence North 72 degrees 32 minutes 06 seconds West a distance of 931.30 feet; thence proceed along defendants' western property line, said line being coexistent with the eastern right of way line of Hickory Street North 64 degrees 59 minutes 32 seconds East a distance of 286.28 feet to point of beginning, said parcel of land contains an area of approximately 2.453 acres.

Being all of defendants' property acquired in COB 363, Folio 406, by Judgment of Possession, dated October 14, 1986 as recorded in the Conveyance Records of St. Charles Parish, State of Louisiana.

AND IT IS HEREBY FURTHER ORDERED that the defendants, ALBERTHA C. SCREEN, ALVIN J. CAILLOUET and WALTER S. RODRIGUEZ, vacate the above described property and surrender possession thereof unto the plaintiff immediately upon the deposit of the estimated just compensation into the registry of this court.

Hahnville, Louisiana, this 16th day of November, 1988.

/s/ JUDGE,
TWENTY-NINTH JUDICIAL
DISTRICT COURT

STATE OF LOUISIANA,
DEPARTMENT OF
TRANSPORTATION &
DEVELOPMENT

VS.

ALBERTHA C. SCREEN,
ET AL

Filed November 18, 1988

NUMBER 38-386-C

29TH JUDICIAL
DISTRICT COURT

PARISH OF ST. CHARLES

STATE OF LOUISIANA

Lenita P. St. Amant
Deputy Clerk

RECEIPT

CHARLES J. OUBRE, JR. CLERK OF COURT

TO

THE STATE OF LOUISIANA, AND
THE DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

STATE OF LOUISIANA
PARISH OF ST. CHARLES

BE IT KNOWN that on the 18th day of November, 1988, before me, /s/ Lenita P. St. Amant, Deputy Clerk of Court and Ex-officio Notary Public, in and for the Parish of St. Charles, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Charles J. Oubre, Jr., a resident of the Parish of St. Charles, State of Louisiana, and Clerk of the Twenty-Ninth Judicial District Court for the State of Louisiana, in and for the Parish of St. Charles.

The appearer declared that in the cause entitled "STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, VS. ALBERTHA C. SCREEN, ET AL," No. 34,386-C of the docket of said court, the State of Louisiana seeks the expropriation of the full ownership of the property described below, subject to the reservation in perpetuity in favor of the owners of all oil or gas located under the property described below, or the royalties therefrom, in accordance with law, and subject to any existing oil or gas reservation or to any existing oil or gas lease, being a controlled-access facility with no right of access to, from or across such facility to or from abutting lands except at the designated points at which access is permitted upon the terms and conditions specified from time to time, and upon the service, frontage or access roads provided, for the project set forth in the petition, said property being described as follows, to-wit:

> Two (2) certain tracts or parcels of land, and all of the rights, ways, privileges, servitudes and advantages thereunto belonging or in anywise appertaining, situated in the Parish of St. Charles, State of Louisiana, and in Section 40, Township 12 South, Range 9 East, Southeastern Land District, identified as Parcel Nos. 22-12 and 22-16, on a white print of a plat of survey, consisting of Sheet No. 22, made by Larry W. Clark, Registered Land Surveyor, dated June 29, 1984, revised, annexed to the above numbered and entitled suit, said tracts or parcels being outlined in red and being more particularly described in accordance with said plat of survey, as follows:

REQUIRED IN FULL OWNERSHIP

PARCEL NO. 22-12:

Beginning at a point located on defendants' most northerly property line, said line being coexistent with the southerly existing right of way line of LA-US 61 (Airline Highway), St. Charles Parish, State of Louisiana, said point being more fully described as being located approximately 91.18 feet South 19 degrees 52 minutes 11 seconds East opposite Highway Survey Station 66+99.30 to the right or southerly side of the centerline of LA-US 61 (Airline Highway); thence proceed from this point of beginning along defendants' northern property line, said line being coexistent with the southerly existing right of way line of LA-US 61, South 72 degrees 32 minutes 06 seconds East a distance of 355.45 feet; thence proceed along defendants' eastern property line, said line being coexistent with the westerly existing right of way line of Hickory Street South 64 degrees 59 minutes 32 seconds West a distance of 283.76; thence proceed along defendants' western property line, said line being coexistent with the easterly existing right of way line of unnamed street North 19 degrees 52 minutes 11 seconds West a distance of 240.97 feet to point of beginning, said parcel of land contains an area of approximately 34,036.92 square feet.

REQUIRED IN FULL OWNERSHIP

PARCEL NO. 22-16:

Beginning at a point located on defendants' most northerly property line, said line being coexistent with the southerly existing right of way line of LA-US 61 (Airline Highway) said point being more fully described as being located approximately 107.37 feet South 64 degrees 59 minutes 32 seconds West opposite Highway Survey Station 72+63.29 to the right or southerly side of the centerline of LA-US 61 (Airline Highway); thence proceed from this point of beginning along defendants' northern property line, said line being coexistent with the southerly existing right of way line of LA-US 61 South 72 degrees 32 minutes 06 seconds East a distance of 360.14 feet; thence proceed along defendants' most easterly property line South 17 degrees 27 minutes 54 Seconds West a distance of 146.60 feet; thence proceed South 72 degrees 32 minutes 06 seconds East a distance of 360.00 feet; thence proceed South 17 degrees 27 minutes 54 seconds West a distance of 46.71 feet; thence North 72 degrees 32 minutes 06 seconds West a distance of 931.30 feet; thence proceed along defendants' western property line, said line being coexistent with the eastern right of way line of Hickory Street North 64 degrees 59 minutes 32 seconds East a distance of 286.28 feet to point of beginning, said parcel of land contains an area of approximately 2.453 acres.

Being all of defendants' property acquired in COB 363, Folio 406, by Judgment of Possession,

dated October 14, 1986 as recorded in the Conveyance Records of St. Charles Parish, State of Louisiana.

The appearer further declared that in accordance with an order of the court signed herein, the Department of Transportation and Development, on behalf of the State of Louisiana and of itself, has this day paid into the registry of said court the sum of Two Hundred One Thousand Seventy-Eight and No/100 Dollars ($201,078.00) in cash, lawful current money of the United States of America, by delivering said sum to the said Clerk of Court and said appearer further acknowledges receipt of said sum and declares that he has placed same in the registry of said court.

THUS DONE, READ AND PASSED at my office in the City of Hahnville, Parish of St. Charles, State of Louisiana, in the presence of Lena C. Breaux and Jacqueline R. Perret, competent witnesses, who have hereunto signed their names with the appearer and me, said Notary, the day, month and year first above written.

/s/ Lena C. Breaux

/s/ Jacqueline R. Perret

/s/ Charles J. Oubre, Jr.
CHARLES J.OUBRE, JR.
CLERK OF COURT

/s/ Lenita P. St. Amant
DEPUTY CLERK OF COURT AND
EX-OFFICIO NOTARY PUBLIC